



February 19, 2016

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## ENGROSSED SENATE BILL No. 372

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DIGEST OF SB 372 (Updated February 17, 2016 5:52 pm - DI 101)

**Citations Affected:** IC 24-4.4; IC 24-4.5; IC 32-29.

**Synopsis:** Deficiency judgments and foreclosed property. Provides that the following statutes are not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed on a specified form required by amendments to a federal rule concerning mortgage disclosures: (1) The statutes governing the payoff of, and short sales involving: (A) first lien mortgage transactions; and (B) consumer credit sales and consumer loans under the uniform consumer credit code. (2) The statute allowing the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure to waive, with the consent of the judgment holder, the time limitations that would otherwise apply to the issuance of process with respect to the judgment or decree of foreclosure.

**Effective:** Upon passage.

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### Bray, Holdman

(HOUSE SPONSORS — WASHBURN, PRICE)

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January 11, 2016, read first time and referred to Committee on Civil Law.

January 26, 2016, reported favorably — Do Pass.

January 28, 2016, read second time, ordered engrossed. Engrossed.

February 1, 2016, read third time, passed. Yeas 50, nays 0.

#### HOUSE ACTION

February 9, 2016, read first time and referred to Committee on Financial Institutions.

February 18, 2016, amended, reported — Do Pass.

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ES 372—LS 6807/DI 101





February 19, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 372

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 24-4.4-2-201, AS AMENDED BY P.L.27-2012,  
2       SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       UPON PASSAGE]: Sec. 201. (1) A creditor or mortgage servicer shall  
4       provide, in writing, an accurate payoff amount for a first lien mortgage  
5       transaction to the debtor not later than seven (7) business days  
6       (excluding legal public holidays, Saturdays, and Sundays) after the  
7       creditor or mortgage servicer receives the debtor's written request for  
8       the accurate payoff amount. A payoff statement provided by a creditor  
9       or mortgage servicer under this subsection must show the date the  
10      statement was prepared and itemize the unpaid principal balance and  
11      each fee, charge, or other sum included within the payoff amount. A  
12      creditor or mortgage servicer who fails to provide an accurate payoff  
13      amount is liable for:  
14          (a) one hundred dollars (\$100) if an accurate payoff amount is not  
15          provided by the creditor or mortgage servicer not later than seven  
16          (7) business days (excluding legal public holidays, Saturdays, and  
17          Sundays) after the creditor or mortgage servicer receives the

ES 372—LS 6807/DI 101



debtor's first written request; and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the first lien mortgage transaction from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate payoff amount is provided;

if an accurate payoff amount is not provided by the creditor or mortgage servicer not later than seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's second written request, and the creditor or mortgage servicer fails to comply with subdivision (a).

(2) This subsection applies to a first lien mortgage transaction, or the refinancing or consolidation of a first lien mortgage transaction, that:

(a) is closed after June 30, 2009; and

(b) has an interest rate that is subject to change at one (1) or more times during the term of the first lien mortgage transaction.

A creditor in a transaction to which this subsection applies may not contract for and may not charge the debtor a prepayment fee or penalty.

(3) This subsection applies to a first lien mortgage transaction with respect to which any installment or minimum payment due is delinquent for at least sixty (60) days. The creditor, servicer, or the creditor's agent shall acknowledge a written offer made in connection with a proposed short sale not later than five (5) business days (excluding legal public holidays, Saturdays, and Sundays) after the date of the offer if the offer complies with the requirements for a qualified written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor, servicer, or creditor's agent is required to acknowledge a written offer made in connection with a proposed short sale from a third party acting on behalf of the debtor only if the debtor has provided written authorization for the creditor, servicer, or creditor's agent to do so. Not later than thirty (30) business days (excluding legal public holidays, Saturdays, and Sundays) after receipt of an offer under this subsection, the creditor, servicer, or creditor's agent shall respond to the offer with an acceptance or a rejection of the offer. The thirty (30) day period described in this subsection may be extended for not more than fifteen (15) business days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the thirty (30) day period, the creditor, the servicer, or the creditor's agent notifies the debtor of the extension and the reason the extension is needed. Payment accepted by a creditor,



servicer, or creditor's agent in connection with a short sale constitutes payment in full satisfaction of the first lien mortgage transaction unless the creditor, servicer, or creditor's agent obtains:

- (a) the following statement: "The debtor remains liable for any amount still owed under the first lien mortgage transaction."; or
- (b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a first lien mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the first lien mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

**(4) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).**

SECTION 2. IC 24-4.5-2-209, AS AMENDED BY P.L.27-2012, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 209. (1) Subject to the provisions on rebate upon prepayment (section 210 of this chapter), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (section 210 of this chapter), the total credit service charge, including the prepaid credit service charge, may not exceed the maximum charge allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide, in writing, an accurate payoff amount for the consumer credit sale to the debtor within seven (7) business days (excluding legal public holidays, Saturdays, and Sundays) after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit



1 sale payoff amount. A payoff statement provided by a creditor or  
 2 mortgage servicer under this subsection must show the date the  
 3 statement was prepared and itemize the unpaid principal balance and  
 4 each fee, charge, or other sum included within the payoff amount. A  
 5 creditor or mortgage servicer who fails to provide the accurate  
 6 consumer credit sale payoff amount is liable for:

7 (A) one hundred dollars (\$100) if an accurate consumer credit  
 8 sale payoff amount is not provided by the creditor or mortgage  
 9 servicer within seven (7) business days (excluding legal public  
 10 holidays, Saturdays, and Sundays) after the creditor or mortgage  
 11 servicer receives the debtor's first written request; and

12 (B) the greater of:

13 (i) one hundred dollars (\$100); or

14 (ii) the credit service charge that accrues on the sale from the  
 15 date the creditor or mortgage servicer receives the first written  
 16 request until the date on which the accurate consumer credit  
 17 sale payoff amount is provided;

18 if an accurate consumer credit sale payoff amount is not provided  
 19 by the creditor or mortgage servicer within seven (7) business  
 20 days (excluding legal public holidays, Saturdays, and Sundays)  
 21 after the creditor or mortgage servicer receives the debtor's  
 22 second written request, and the creditor or mortgage servicer  
 23 failed to comply with clause (A).

24 A liability under this subsection is an excess charge under  
 25 IC 24-4.5-5-202.

26 (4) As used in this subsection, "mortgage transaction" means a  
 27 consumer credit sale in which a mortgage or a land contract (or another  
 28 consensual security interest equivalent to a mortgage or a land contract)  
 29 that constitutes a lien is created or retained against land upon which  
 30 there is constructed or intended to be constructed a dwelling that is or  
 31 will be used by the debtor primarily for personal, family, or household  
 32 purposes. This subsection applies to a mortgage transaction with  
 33 respect to which any installment or minimum payment due is  
 34 delinquent for at least sixty (60) days. The creditor, servicer, or the  
 35 creditor's agent shall acknowledge a written offer made in connection  
 36 with a proposed short sale not later than five (5) business days  
 37 (excluding legal public holidays, Saturdays, and Sundays) after the date  
 38 of the offer if the offer complies with the requirements for a qualified  
 39 written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor,  
 40 servicer, or creditor's agent is required to acknowledge a written offer  
 41 made in connection with a proposed short sale from a third party acting  
 42 on behalf of the debtor only if the debtor has provided written



1 authorization for the creditor, servicer, or creditor's agent to do so. Not  
 2 later than thirty (30) business days (excluding legal public holidays,  
 3 Saturdays, and Sundays) after receipt of an offer under this subsection,  
 4 the creditor, servicer, or creditor's agent shall respond to the offer with  
 5 an acceptance or a rejection of the offer. The thirty (30) day period  
 6 described in this subsection may be extended for not more than fifteen  
 7 (15) business days (excluding legal public holidays, Saturdays, and  
 8 Sundays) if, before the end of the thirty (30) day period, the creditor,  
 9 the servicer, or the creditor's agent notifies the debtor of the extension  
 10 and the reason the extension is needed. Payment accepted by a creditor,  
 11 servicer, or creditor's agent in connection with a short sale constitutes  
 12 payment in full satisfaction of the mortgage transaction unless the  
 13 creditor, servicer, or creditor's agent obtains:

- 14 (a) the following statement: "The debtor remains liable for any
- 15 amount still owed under the mortgage transaction."; or
- 16 (b) a statement substantially similar to the statement set forth in
- 17 subdivision (a);

18 acknowledged by the initials or signature of the debtor, on or before the  
 19 date on which the short sale payment is accepted. As used in this  
 20 subsection, "short sale" means a transaction in which the property that  
 21 is the subject of a mortgage transaction is sold for an amount that is  
 22 less than the amount of the debtor's outstanding obligation under the  
 23 mortgage transaction. A creditor or mortgage servicer that fails to  
 24 respond to an offer within the time prescribed by this subsection is  
 25 liable in accordance with 12 U.S.C. 2605(f) in any action brought  
 26 under that section.

27 **(5) This section is not intended to provide the owner of real**  
 28 **estate subject to the issuance of process under a judgment or**  
 29 **decree of foreclosure any protection or defense against a deficiency**  
 30 **judgment for purposes of the borrower protections from liability**  
 31 **that must be disclosed under 12 CFR 1026.38(p)(3) on the form**  
 32 **required by 12 CFR 1026.38 ("Closing Disclosures" form under**  
 33 **the Amendments to the 2013 Integrated Mortgage Disclosures Rule**  
 34 **Under the Real Estate Settlement Procedures Act (Regulation X)**  
 35 **and the Truth In Lending Act (Regulation Z) and the 2013 Loan**  
 36 **Originator Rule Under the Truth in Lending Act (Regulation Z)).**

37 SECTION 3. IC 24-4.5-3-209, AS AMENDED BY P.L.27-2012,  
 38 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39 UPON PASSAGE]: Sec. 209. Right to Prepay - (1) Subject to the  
 40 provisions on rebate upon prepayment (section 210 of this chapter), the  
 41 debtor may prepay in full the unpaid balance of a consumer loan,  
 42 refinancing, or consolidation at any time without penalty. With respect



1 to a consumer loan that is primarily secured by an interest in land, a  
 2 lender may contract for a penalty for prepayment of the loan in full, not  
 3 to exceed two percent (2%) of any amount prepaid within sixty (60)  
 4 days of the date of the prepayment in full, after deducting all refunds  
 5 and rebates as of the date of the prepayment. However, the penalty may  
 6 not be imposed:

7 (a) if the loan is refinanced or consolidated with the same  
 8 creditor;

9 (b) for prepayment by proceeds of any insurance or acceleration  
 10 after default; or

11 (c) after three (3) years from the contract date.

12 (2) At the time of prepayment of a consumer loan not subject to the  
 13 provisions of rebate upon prepayment (section 210 of this chapter), the  
 14 total finance charge, including the prepaid finance charge but  
 15 excluding the loan origination fee allowed under ~~section 201~~ of this  
 16 chapter, may not exceed the maximum charge allowed under this  
 17 chapter for the period the loan was in effect. For the purposes of  
 18 determining compliance with this subsection, the total finance charge  
 19 does not include the following:

20 (a) The loan origination fee allowed under ~~section 201~~ of this  
 21 chapter.

22 (b) The debtor paid mortgage broker fee, if any, paid to a person  
 23 who does not control, is not controlled by, or is not under  
 24 common control with, the creditor holding the loan at the time a  
 25 consumer loan is prepaid.

26 (3) The creditor or mortgage servicer shall provide, in writing, an  
 27 accurate payoff amount for the consumer loan to the debtor within  
 28 seven (7) business days (excluding legal public holidays, Saturdays,  
 29 and Sundays) after the creditor or mortgage servicer receives the  
 30 debtor's written request for the accurate consumer loan payoff amount.  
 31 A payoff statement provided by a creditor or mortgage servicer under  
 32 this subsection must show the date the statement was prepared and  
 33 itemize the unpaid principal balance and each fee, charge, or other sum  
 34 included within the payoff amount. A creditor or mortgage servicer  
 35 who fails to provide the accurate consumer loan payoff amount is liable  
 36 for:

37 (a) one hundred dollars (\$100) if an accurate consumer loan  
 38 payoff amount is not provided by the creditor or mortgage  
 39 servicer within seven (7) business days (excluding legal public  
 40 holidays, Saturdays, and Sundays) after the creditor or mortgage  
 41 servicer receives the debtor's first written request; and

42 (b) the greater of:





- 1 (i) one hundred dollars (\$100); or
- 2 (ii) the loan finance charge that accrues on the loan from the
- 3 date the creditor or mortgage servicer receives the first written
- 4 request until the date on which the accurate consumer loan
- 5 payoff amount is provided;
- 6 if an accurate consumer loan payoff amount is not provided by the
- 7 creditor or mortgage servicer within seven (7) business days
- 8 (excluding legal public holidays, Saturdays, and Sundays) after
- 9 the creditor or mortgage servicer receives the debtor's second
- 10 written request, and the creditor or mortgage servicer failed to
- 11 comply with subdivision (a).

12 A liability under this subsection is an excess charge under  
 13 IC 24-4.5-5-202.

14 (4) As used in this subsection, "mortgage transaction" means a  
 15 consumer loan in which a mortgage or a land contract (or another  
 16 consensual security interest equivalent to a mortgage or a land contract)  
 17 that constitutes a lien is created or retained against land upon which  
 18 there is constructed or intended to be constructed a dwelling that is or  
 19 will be used by the debtor primarily for personal, family, or household  
 20 purposes. This subsection applies to a mortgage transaction with  
 21 respect to which any installment or minimum payment due is  
 22 delinquent for at least sixty (60) days. The creditor, servicer, or the  
 23 creditor's agent shall acknowledge a written offer made in connection  
 24 with a proposed short sale not later than five (5) business days  
 25 (excluding legal public holidays, Saturdays, and Sundays) after the date  
 26 of the offer if the offer complies with the requirements for a qualified  
 27 written request set forth in 12 U.S.C. 2605(e)(1)(B). The creditor,  
 28 servicer, or creditor's agent is required to acknowledge a written offer  
 29 made in connection with a proposed short sale from a third party acting  
 30 on behalf of the debtor only if the debtor has provided written  
 31 authorization for the creditor, servicer, or creditor's agent to do so. Not  
 32 later than thirty (30) business days (excluding legal public holidays,  
 33 Saturdays, and Sundays) after receipt of an offer under this subsection,  
 34 the creditor, servicer, or creditor's agent shall respond to the offer with  
 35 an acceptance or a rejection of the offer. The thirty (30) day period  
 36 described in this subsection may be extended for not more than fifteen  
 37 (15) business days (excluding legal public holidays, Saturdays, and  
 38 Sundays) if, before the end of the thirty (30) day period, the creditor,  
 39 the servicer, or the creditor's agent notifies the debtor of the extension  
 40 and the reason the extension is needed. Payment accepted by a creditor,  
 41 servicer, or creditor's agent in connection with a short sale constitutes  
 42 payment in full satisfaction of the mortgage transaction unless the



creditor, servicer, or creditor's agent obtains:

(a) the following statement: "The debtor remains liable for any amount still owed under the mortgage transaction."; or

(b) a statement substantially similar to the statement set forth in subdivision (a);

acknowledged by the initials or signature of the debtor, on or before the date on which the short sale payment is accepted. As used in this subsection, "short sale" means a transaction in which the property that is the subject of a mortgage transaction is sold for an amount that is less than the amount of the debtor's outstanding obligation under the mortgage transaction. A creditor or mortgage servicer that fails to respond to an offer within the time prescribed by this subsection is liable in accordance with 12 U.S.C. 2605(f) in any action brought under that section.

**(5) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)).**

SECTION 4. IC 32-29-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The owner of the real estate subject to the issuance of process under a judgment or decree of foreclosure may, with the consent of the judgment holder endorsed on the judgment or decree of foreclosure, file with the clerk of the court a waiver of the time limitations on issuance of process set out in section 3 of this chapter. If the owner files a waiver under this section, process shall issue immediately. The consideration for waiver, whether or not expressed by its terms, shall be the waiver and release by the judgment holder of any deficiency judgment against the owner.

**(b) This section is not intended to provide the owner of real estate subject to the issuance of process under a judgment or decree of foreclosure any protection or defense against a deficiency judgment for purposes of the borrower protections from liability that must be disclosed under 12 CFR 1026.38(p)(3) on the form required by 12 CFR 1026.38 ("Closing Disclosures" form under the Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X)**



1       **and the Truth In Lending Act (Regulation Z) and the 2013 Loan**  
2       **Originator Rule Under the Truth in Lending Act (Regulation Z)).**  
3       **SECTION 5. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Civil Law, to which was referred Senate Bill No. 372, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 372 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 372, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, line 15, strike "section 201 of".

Page 6, line 20, strike "section 201 of".

and when so amended that said bill do pass.

(Reference is to SB 372 as printed January 27, 2016.)

BURTON

Committee Vote: yeas 11, nays 0.

